IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMARY SUIT NO.3398 OF 2002

Advance Metal Powder Plaintiff

versus

Ahura Welding Electrode
Manufacturers Limited Defendant

Mr.Shah i/by K.D.Shah for plaintiff.
None for defendant.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 18th July 2005
PC :

1. Heard Ms.Shah for plaintiff. She tenders an affidavit proving service of writ of summons. Same is taken on record marked "X" for identification. Original documents along with list marked "X-1" for identification.

2. The claim in the summary suit arises on account of written contract as evidenced by purchase orders, delivery challans and invoices under which the plaintiff has supplied Metal Powder from time to time. The invoices are for Rs.11,01,094/-. The plaintiff has pointed out that in respect of first invoice an amount of Rs.22,590/- is paid and only Rs.16,499/- is outstanding. Since the amount was not paid a

notice was addressed to which the defendant's replied acknowledging their liability and assuring that payment would be made. That letter is at Exhibit-B. Since no payment was made once again several demands were raised and this time a letter dated 31st August 2001 was addressed by the defendants to the plaintiff assuring that a sum of Rs.2.00 lakh would be paid every month. Even this assurance is not complied with. It is pointed out that the amount under the invoices along with interest comes to Rs.14,69,627.11 Ps..

3. After a perusal of the plaint I am satisfied that the claim is maintainable under Order XXXVII of CPC.. Considering the dates of invoices as also the acknowledgement in writing, the suit is not barred by limitation. There is no dispute raised to the claim inasmuch as despite receipt of writ of summons no appearance has been entered. The liability is acknowledged and the letters to that effect are on record. Accordingly, plaintiff is entitled to a decree as prayed. There will be a decree as prayed. Refund of court fees and computation of advocates costs as per rules. Certified copy expedited.

(S.C.DHARMADHIKARI, J.)